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ABSTRACT

A symposium discussion is presented on the topic, "Teaching 'Law and Education' Outside the Law School." The participants were: Walter J. McCann of Harvard Graduate School of Education; E. Edmund Reutter, Jr., of Teachers College of Columbia University; Robert J. Simpson of University of Miami Center for Policy and Law in Education; Tyll Van Geel of the University of Rochester College of Education, and Alan Miles Ruben (Moderator) of Cleveland State University College of Law. The discussion addresses courses involving law in education, or the legal aspects of education. It is suggested that it is increasingly important to teach educators about legal rights and responsibilities. Graduate versus undergraduate course offerings and the content of law and education courses are discussed. Service opportunities of a center for educational policy and law are outlined, and problems of materials and methodology in teaching law and education courses, and the particular problems in teaching at the higher education level are discussed. Summary statements by the participants and questions from the audience are included. (SW)

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SECTION ON

LAW AND EDUCATION

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SYMPOSIUM

TEACHING "LAW AND EDUCATION" OUTSIDE THE LAW SCHOOL

Presented at the Annual Meeting of the
Association of American Law Schools
December 29, 1975

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Law Conference

Topic: Teaching Law Outside of Law Schools

Moderator: Good Morning. I am Alan Miles Ruben, and I'm Chairman and Moderator of the panel discussion today. For those of you who braved the conference rigors to the last day; arisen the first thing in the morning for the program and found the last room on the corridor -- we have an interesting program for you today. We have some lawyers and some non-lawyers who are both engaged in the same field, teaching education law outside the law school or, to be precise, in graduate schools of education at four different universities of diverse character and size. Let me introduce our panelists to you.

Professor Edmund Reutter has been on the staff at Teachers College, Columbia, since 1950. He is the co-author of one of the better known books, The Law of Public Education.[1] He is former president of the National Organization on Legal Problems of Education (NOLPE) and the author of many articles on the legal aspects of education. It is of particular interest that he serves as a special consultant to the NAACP legal defense fund.

Next is Professor Robert Simpson of the University of Miami, Florida. He came through the root of an entirely parochial and provincial education: Eastern Michigan, then to University of Michigan and, finally, Wayne State University for his doctorate. He is the director of the Center for Policy and Law in Education in the School of Education at Miami. He is a member and officer of NOLPE and is the author of some four books and numerous

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1 E. Edmund Reutter, Jr., and Robert R. Hamilton, The Law of Public Education. Mineola, N.Y.: The Foundation Press, 1970 & 1976.

articles in the field of educational law. His particular interests include students' rights, teacher liability and school desegregation. He teaches not only education law, but also management. He first came to his interest in law in education, he tells me through a very direct route: As a defendant in a law suit.

Next, Professor Tyll Van Geel of the University of Rochester's College of Education. There is no law school associated with that institution, so he supplies his own resources. He comes to us from Princeton University, Northwestern University School of Law, where he received his J.D. degree in 1965, and then to Harvard Graduate School of Education where he received his doctorate in education. I will not take time to list all the books and articles which he has authored, except one, with David Kern and Walter J. McCann, The Effects of Revenue-Sharing and Block Grants in Education.[2] Walter McCann was director of the administrative career program at the Harvard Graduate School of Education when Dr. Van Geel was there.

And by coincidence or design, it so happens that our last panelist is, in fact, Professor Walter McCann, chairman of the programs in Administrative Planning and Social Policy in the Harvard Graduate School of Education. He comes to us via Wesleyan University (Connecticut) and Harvard Law School before the Graduate School of Education. He was one of the original board members of the Harvard Center for Law in Education, which, he tells me, is engaged in stirring up all sorts of difficulties in the Boston environment. But that is nothing new to Harvard. His publications include a recent, well-known case volume in public school law,[3] and he teaches various courses in law and public policy in education at Harvard.

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2 David Cohen and Walter J. McCann The Effects of Revenue Sharing and Block Grants on Education: A Report to the Secretary of Health, Education and Welfare, October 31, 1970.

3 Kern Alexander, Ray Corns and Walter McCann, Public School Law, Cases and Materials. St. Paul, Minn.: West Publishing Co., 1969; 1973 suppl., and currently under revision.

So, there are our panelists, coming from a diverse series of backgrounds, different focal points of interest in the subject, and perhaps--hopefully--some conflict and clash of views on what is law in education all about. Let me start off our panel program by asking Dr. Simpson this question:

In view of the rise in litigation involving school teachers, professors and institutions, and the seeming proliferation of courses involving law in education, can you give us some qualification of the importance of the topic for our listeners today?

Dr. Simpson: I'd like to indicate a couple of things. You speak of the proliferation of courses. I don't believe there are enough courses in education law, while by comparison to what was offered ten years ago, we have more. Many more are still needed at institutions especially in undergraduate and beginning graduate-level programs. Usually when we start with a group of teachers in a field training session, we point out that one out of each six of them will be involved in litigation within the next twelve months. We hasten to define "litigation" as beginning when someone consults an attorney about starting action against you, and you are notified of such action. Naturally, most of those initiated activities end before they result in a court decision.

The second point regarding the increasing importance of teaching educators about legal rights and responsibilities is

the increasing amounts in awards of damages. The record settlement, to my knowledge, regarding education-related injury was over five million dollars. It concerned a boy, injured in football, who became a paraplegic.[4]

With these, a related point is the increasing coverage of liability insurance provided through some unions and education associations which protect one in the ordinary course of duties. But beware of exclusions such as exclusions regarding use of one's personal automobile in connection with work. These events tend to get educators' attention making them receptive to substantive areas needing policy development.[5] Again, this is our Center's approach towards development of policy as a preventative. We don't claim to eliminate an institution's need for an attorney. We don't want to put all the attorneys out of business, but that is analogous to efforts to prevent cavities not hurting the dentists much.

Moderator Ruben: It has been my impression that most courses in the legal aspects of education, and the like, occur in graduate divisions rather than in the undergraduate curricula. Can you speculate as to whether this is correct and if so, the reasons why this is so?

Dr. Simpson: Yes, many have tried to get it at the undergraduate level. I was at Miami of Ohio before coming to the

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4 Stead v. Ridell Inc., No. 76-1411, 5th Cir.

5 The Center for Policy and Law in Education, School of Education University of Miami, Coral Gables, FL 33124

other Miami. (I got on the wrong airplane once and ended up in Florida, liked it better and decided to stay). There we had an undergraduate course that went heavily into the legal aspects of education, but most students were not interested in that subject until they were either in or had completed student teaching. Prior to that experience, it was too theoretical to maintain their interest unless you dwelled on all the sex-related cases.

Moderator Ruben: Professor McCann, can you suggest perhaps some other alternatives to this phenomenon?

Dr. McCann: Yes, there may be many reasons why the subject is taught where it is, one largely due to institutional accidents. In viewing most institutions of undergraduate education, there is a strong nucleus of faculty in arts and sciences and for that reason, the professional schools, be they in education or law, have not had the impact on undergraduate curriculum that they might. That, in part, accounts for the location of the courses in the legal aspects of education.

Secondly, the cause of most of these "school law" courses was probably for preventive medicine--defensive reaction against the possibility of legal difficulties. As a result, they grew up in departments of educational administration and that tended to be their home. Since those departments operate typically

and primarily at the graduate level, the offering was generally not available to undergraduate students. Otherwise, there is no reason why that has to be so, at least in theory. While there is no abstract reason, politics makes it difficult to change practice. While all know how difficult it is to change universities, there is no abstract, theoretical reason why the course should not be offered more frequently at the undergraduate level. The objective is not teaching law to develop lawyers, which is a slightly different matter, and this distinction may account for some of the locations of the course.

Thirdly, there is a difference in purpose that underlies the location--graduate and/or undergraduate--of the courses. When one comes to the difference in the purposes of these courses in the legal aspects of education, one gets some additional clues as to why they are located where they are.

Moderator Ruben: To what extent, if any, Dr. Van Geel, do the state requirements--i.e., public school codes in re. curriculum--have impact upon the offering of school law in the undergraduate school of education curriculum?

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6 Generally, the undergraduate programs in education schools provide initial preparation for classroom teachers with masters' degree programs being the basic preparation level for administrative and support personnel.

Dr. Van Geel: I'm most familiar with the certification requirements in New York State where there are two levels of administrative certificates: One for the building level principal or supervisor, and another for the school district level. The requirements vary in the number of hours of preparation: A thirty-hour certificate for the building level and a sixty-hour for the district. In the thirty to sixty hours, a segment is designated as courses in education administration, but it doesn't say which courses one has to take. Students may or may not elect courses in law and education. These students are generally already beyond the undergraduate level. In seeking masters or doctoral degrees, they come to a college of education's graduate program.[7] The law courses, when in administration, are acceptable towards that certification requirement,[8] so one constraint upon undergraduate offerings in school law is that the certification programs for administrators are housed in graduate schools and, even then, students are often free to take the law courses or not.

Moderator Ruben: Professor Reutter, in many states, required courses preempt much of the undergraduate programs, squeezing out opportunities to take electives such as school law. In focussing upon the contents of undergraduate programs, one finds that the handle--law and education--could mean, substantively,

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7 Even these courses within a school of education are heavily oriented to instruction, psychology, historical foundations and research with less than half of the total degree hours being devoted to the graduate program level of educational administration.

8 Graduate programs in educational administration, especially at the post-master's levels, typically require some work outside of the School of Education.

many different things. What do you envision as an appropriate content for a course in law and education?

Dr. Reutter: The purpose of a course in school law for educators, as distinguished from lawyers, is to help them understand the legal ingredient in educational decision-making and practice. That is the prime basis to the work as far as Teachers College is concerned. While students from the law school take the education law courses for credit towards their law degrees, the substance is aimed at school leaders. In a 1958 article,[9] I wrote:

> There is a legal ingredient in almost every educational decision--whether it involves punishing a pupil, requiring a pupil to take a course, operating a school cafeteria, employing a teacher, using a school building, expending school funds, keeping records, transporting pupils or reciting the Lord's Prayer in school. In some situations the legal ingredient is the crucial factor; in others it is relatively insignificant. This involvement of the law is similar to that of other factors which should be considered before taking educational action--considerations in such areas as psychology, teaching method, sociology, and community relations. Obviously there are many ideas apparently good educationally or socially which are not legally acceptable and conversely many things permitted by the law may be undesirable educationally or socially.

The main thrust of our work is with people who are going to be responsible for making these types of decisions. We endeavor to help them to consider properly the legal ingredient.

Moderator Ruben: In terms of subject area, what kinds of topics would you consider as appropriate for educators?

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9 "Essentials of School Law for Educators" in Teachers College Record, Vol. 59, No. 8, May 1958, pp 441-449. Above quote is from p. 442.

Dr. Reutter: This would depend much upon the audience of a particular course and upon the other elements of the curriculum of a given institution. The focus could be described by analogy with first aid and medicine or building planning and architecture. My increasing feeling and firm belief is that inadequate progress is being made in educational policy, which is a form of public policy, because there is insufficient communication between those whose profession is law and those whose profession is education. One cause is that most lawyers don't know enough about education and most educators know too little about law for effective communication. Thus, an important fringe benefit of the instruction in "school law" is to help educators to focus upon legal issues and communicate effectively with the school attorney.[10]

So many education cases come out of court with bad law because (1) the educational issues were not properly presented and (2) educators do a lot of ignorant things because they don't understand basic law. In "education law," typically the focus is first upon educational problems; then the legal ingredients come from the traditional subject area, constitutional, contract, or torts.

Moderator Reuben: Do the other panelists agree that the broad range of a course in law and education includes matters like contract, torts and other traditional areas or is there a different and sharper focus?

Dr. Van Geel: In a college of education with the number of courses they are expected to carry plus the research requirements, plus the number of courses they are willing to have on the books in law,

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10 A similar reason can be given for attorneys taking the "education law" courses since, as one participant noted, school buses seem more interesting to lawyers these days than do ambulances.

there are terrific constraints.

Taking a different tact, most of the course material I cover centers upon constitutional issues. A shopping list of some of the topics now covered in a couple of courses includes aid to private schools; students' free speech, due process, desegregation, sex discrimination, tracking and ability grouping, reapportionment, educational finance, and the allocation of authority between state and local agencies. Legal questions arise, also, in regard to public participation in education, the power of the unions in educational politics and various federal factors affecting public education. Currently, Rochester is planning a separate course in collective negotiations. It will be the one non-constitutional course offered.

The crux of the major kinds of policy and headline-grabbing issues affecting the schools day-by-day seems to be a form of sadism. On the other hand, it's these kinds of topics in which the students seem to be extremely interested as well as the sort of things that they as professional educators will be expected to know by parents and other interested citizens.

Moderator Ruben: Dr. McCann sees a slightly different focus for a course on law and education. What do you perceive as key objectives?

Dr. McCann: Before one decides what to offer, there obviously must be some view in mind as to what people want or need to know. What process do you have in mind to be sure about the outcome? One purpose of an "education law" course, as I see it, is probably somewhat between what typical education and law schools would teach. The purposes might fall into three categories. First would be "knowledge" followed by the related

area of "demystification". Finally, would be an area called "habits of mind".

"Knowledge" would include the probable original impetus in most courses in law and education; i.e., the notion of preventive medicine to help the practicing educators to avoid the legal springguns--essential knowledge if one is going to try to run a school system, particularly today where students and parents are prone to litigation.

Another consideration, of course, is that the basic framework of the public school system is a legal structure by definition. Secondly, that particularly the new breed who will run educational institutions, can use law as a positive lever to create policy and administrative change. There is nothing more difficult than creating administrative change in educational institutions, but if one understands the lever of the law and how to use it, it should have a positive influence. An illustrative example is the development of procedural due process guidelines for disciplining students that came from cases in the late 60's and which are now part of policy of many educational systems. Some policy changes for a positive over-all effect would be difficult to implement without the supportive force of law.

Thirdly, there is a more general knowledge problem facing the teaching of "school law" outside of law schools -- it is like trying to teach zoology without ever mentioning the fact that there is a spine. It seems that many of the people who teach law in education schools aren't aware of the operational importance of the societal backbone which the legal system provides. There is a general education function still to be served at even the graduate level. Related to

that "knowledge" is the second category of "demystification". In other words, there is an enormous amount of abra cadabra--particularly on the part of laymen--if you say the right words in law, you win; if you say the wrong words, you lose. For example, to begin to overcome that, I have people read Gideon's Trumpet[11], which, while not directly affecting education, has an enormous impact on helping to demystify the legal process. Thus, it helps the layman deal more intelligently with lawyers. Given, the trainees here involved--the school officials--are going to have to deal often with lawyers, so it will be helpful for educators to understand some of their terms and, more importantly, their thought processes.

Lastly, is the instructional considerations of notion, "habits of mind". While there may not be a distinct pedagogical technique called "the legal method", so substantially different from any other kind of approach to understanding the world that one can only get it in a law course, the subject does provide a place where a student can get an analytical approach which moves logistically, step-by-step--distinct from the kind of decision-making that often occurs in schools of education, which is ad hoc and subjective, based on little evidence. The "law" approach should be helpful to people who are going to be making school decisions where one has to go through the rigors of moving logically to a decision; to write out decisions; to be consistent, or find consistency in the decision-making process, as distinct from the kind of ad-hocracy normally found in the administrative context of the school system.

While this is not, fundamentally, the only way in which decisions can and should be made, it is a helpful counterpoint for many administrators.

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11 Anthony Lewis, Gideon's Trumpet, N.Y.: Random House, 1964

In addition, one perception about students who haven't been to law school is that, unlike lawyers who often seem brash, they are often afraid to ask what seems to be the naive question. Since lawyers frequently move substantively from field to field, they have to apply their specialized knowledge in various subject fields with which they are unfamiliar. They get into the habit of asking what seem to be rather naive, but important questions. The process of experiencing some legal training--some case study--gets one into the habit of asking "Well, what does that mean?"[12] "Why do you say that?" "What do you mean when you say that?" As you know, that can be a deadly process at the dinner table but, in the decision-making process and in the classroom, it's a helpful skill.

Moderator Ruben: A variety of comments have been made about the rationale for a course on law and education: legal skills, including analysis, imparted to some level of educators; e.g., in decision-making; breaking-down of communication barriers, the sex appeal of the great constitutional issues of the day, and the more mundane, but terribly important notion that educators ought to have some awareness of legal principles so they can avoid pitfalls of daily operation. But in the larger context--beyond coursework-- a center for educational policy and law offers other service opportunities. Bob Simpson, have you any thoughts on this?

Dr. Simpson: Thank you for the opening. I even have some brochures here about our Center for Policy and Law in Education and notice how we use the words "policy" and "law" with the emphasis on the appropriate

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12 The reader, from the background of education or law, must realize that the case study project may vary some not only between schools of education and law but within those divisions, dependent upon the subject and the instructor.

development of policy, rule and regulation.[13] Policy, as the preventive face of school law, is developed by having educators and laymen meet in a reasonably prudent fashion to develop options; select the best choice, then have it approved by counsel to see that it is not in conflict with superior law or that the statements are not too vague.

Another service of our Center is providing the materials for attorneys such as case lists on given topics in which they are involved in litigation. For example, a quick look at standard taxonomies of school law will cause great difficulty in finding specific topics dealing with students' rights. This applies also to key numbers. Further aid can be given in the collective bargaining process. Workshops for attorneys, negotiators, school board members, teachers, parents, and, even, students deal with the legal concepts of rights and responsibilities. We avoid taking an adversary role. In one case we had both sides come to us for aid. We gave them the same information; i.e., what the law said so far as it might affect them, and we told each that the other side had contacted us. These are some of the things a Center can do. Another Center at the University of Miami is federally funded and focusses upon an advocate's role in school desegregation and related issues. I think Professor McCann's Center at Harvard--I'm not sure what side of the fence it is now on in some issues--tends to go in and stir things up. We are usually called in after it is stirred up.

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13 In the school or college scene "policy" is defined as the general value guidelines which the controlling board will write and follow. "Rules" are supportive, policy statements which describe objectives in measureable terms including the officer or employee responsible for achievement. Rules might be appropriate content for a negotiated, master contract. "Regulations", on the other hand, are statements of professional choice--the way duties will be met. Where policy statements are the province of the customers; the public--regulations are the domain of the professionals. The common, meeting-ground should be incorporated in the rules. The term "policy" is also used generically to cover all three levels.

Moderator Ruben: Professor McCann, would you care to respond to that?

Dr. McCann: The Harvard Center for Law in Education enters a law suit for the plaintiffs so we are clearly on one side, meaning, of course, we represent a particular group of plaintiffs. There are obviously many sides these days to issues of desegregation, but a suit tends to make it "them" and "us". The many policy sides that have grown up in the desegregation process are interesting to study. Recently in my classes I have had a number of people from the Boston school system: teachers, administrators, the former school superintendent's assistant, the union president, and the number one vote-getter on the school committee. None of these people, prior to taking my class, had ever read Brown v. The Bd. of Education.[14] That in itself is disturbing if nothing else happened and I know they haven't read Keyes,[15] and they certainly hadn't read Bradley[16] or Milliken,[17] yet they were telling me that the solution to Boston was metropolitan desegregation!

I said, "Hey, have you ever heard of court decisions on it?" They had not heard of it and must have not read Brown v. Bd. of Education. We had a rather lengthy and heated discussion of the issues on Brown in which they weren't just the sides of the plaintiffs and defendants but many shades of opinion about what that case could, should and does mean. If nothing else happened, I would have counted, in the peculiar circumstances of Boston this year and

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14 Brown v. Board of Education of Topeka, 347 U.S. 483, 74 S.Ct.686, (1954).

15 Keyes v. Sch. Dist. No.1, 413 U.S. 189, 43 S. Ct. 2686, (1973)

16 Bradley v. Sch. Bd., City of Richmond, 382 U.S. 103 86 S.Ct.224 (1965).

17 Bradley v. Milliken, 402 F. Supp.1096 (E.D.Mich.1975), app'd sub nom Milliken v. Bradley, 418 U.S. 717 (1974).

last year, this course a success. Boston is peculiar right now but, unless the law changes dramatically, it is not going to be still unique in the North during the next decade. This process is going to occur in a rather dramatic fashion elsewhere in the North. So, as far as a kind of process to have an increasing dialogue between lawyers and educators over the next decade, one can perform a public service simply by having the people read the legal resources; discussing them openly; saying yes, this is real, there is a law there; this is what it looks like; this is what it reads like, and it will indeed cause you to do things.

Moderator Ruben: I might hasten to add that last night Dr. McCann made it perfectly clear that Harvard was not solely responsible for the problems of Boston. I want to talk for a moment if I can switch the pitch, to the problems of materials and methodology in teaching such a course from the viewpoint of the instructor. Dr. Reutter, what kind of material do you use in your classes on school law?

Dr. Reutter: We use a combination of the case method and textual approach because the product, as I indicated the purpose before, involves four things. (1) The answers--at least according to the date the course is given--to important educational questions are important starting ground for people who are going to spend the rest of their careers in education. The school leadership dealing with the legal problems must understand and recognize preventiveness as well as know what the answers of the moment are. This would mean the application of general legal principles

to all kinds of educational problems.

(2) By understanding those principles and treating them in the educational context, one actually forms the rules for educators who are actually making those decisions; e.g.,who is going to punish the pupil and for what reasons drawing from case law principles rather than eclectic kinds of cases one gets a basis for prognosis. Not, I said, first aid, but a basis for prognosis as to where the law may be going and (3) the mustering of arguments one would have to present to accomplish the unique function of deciding educational goals. The law tells what one can and must do but never what one should do. One of the big practical problems is that school board attorneys, in general, are just not astute, for various kinds of reasons, in the educational "shoulds" and so the educational ingredients are not properly presented in the cases. There is argumentation with expert witnesses which gets nowhere: opinion-types of testimony which many of you are familiar with. However, if educators are aware of the kinds of arguments that have to be presented, this means educational proof as to where something does indeed lead to something else. (4) Can one muster arguments and gather evidence, to show, in fact, if student dress has some effect on the way students learn, or if it is important for athletes to have crew cuts? These are the kinds of matters that one can anticipate that somebody will challenge in court, and if they have educational merit, it is a good idea they be decided before being confronted in an adversarial

posture in the court. A lot of educational evidence is not presented by attorneys to the courts because the educators have not presented it to them or because the attorneys have not asked for it. My main thesis is we have two separate professions which must work together: those whose main profession is law but, if they are going to work in education, need to know a lot about schools. Then there are the education converts who recognize the need for understanding the law, and it is those converts that we in schools of education try to work on.

Moderator Ruben: I'm going to ask Dr. Simpson to describe the kinds of materials and methodology he uses in his courses.

Dr. Simpson: A great variety actually. I teach one basic course in education law and then another in advanced policy and educational law. In the latter, students get heavily into analysis of cases and actual development, for their own agency, of rules and regulations that will focus upon a particular problem they are facing at that time. It usually will involve their own legal counsel and fellow faculty members who will be effected by it. I might add that in that one we use Dr. McCann's book,[18] and in the first course, Dr. Reutter's text[19] is used. This book has a lot of text material that helps the students in their first awareness of the law, i.e., to understand what the cases are talking about; what the issues are, and to have reference to other cases. There is a lesser amount of text in Professor McCann's book, but the case materials are heavier

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18 See n. 3, supra.

19 See n. 1, supra.

as is more appropriate for advanced students. Also, we use programmed learning materials[20] that help students in the law library; e.g., through the digests and,even, Shepardizing in substantive areas. We take care to keep them out of procedural areas other than to help them understand some terms and what happens when they get this or that piece of paper signed by the court; what kind of trouble they might be in, then aiming as to how they may continue to keep up to date after they leave the course.[21]

As Dr. Reutter says, its one thing what the law says today, but another is how to stay current such as through the NOLPE publications, and about fifteen other inexpensive materials to use at their schools or colleges. There should be a school law specialist on each faculty just as there should be a first aid person. This person would act more or less as translator between faculty and the legal consel for that educational agency. Our staff uses many visual materials, e.g., slides covering new litigation as well as items on the frontier of law. We used to be able to just give students the recipe approach: about the state finance law; how to conduct a board meeting, and how to hire and fire a teacher. They could memorize it, but today that approach is virtually impossible. If anything is accelerating at a fantastic rate, its the number of substantive items being litigated as well as the number of items per se.

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20 R. J. Simpson, T. J. Vest and W.D. Spino, School Law: A Guide to Professional Conduct, a programmed, instructional module designed to assist educators in legal research and policy development. (Available from the Center at University of Miami for $2.50.)

21 A "Bibliography of Inexpensive Resources" is continuously updated by the Center for Policy and Law in Education.

Moderator Ruben: Walter McCann uses a book which might be suitable for a law school course. It has a great emphasis upon actual cases and statutory materials. It is possible Prof. McCann, to actually teach through the Socratic method, in a school of education, to a non-law student? Also, is it possible really to get them to draft legislation even though they are not involved in the legal process?

Professor McCann: Well, we ought to remember that Socrates wasn't a lawyer. After all, he was a philosopher. (A Voice: We lawyers are inclined to forgive him. Another Voice: Remember, it's believed that his students poisoned him!). The notion that somehow the question-and-answer method is only applicable to somebody the moment he has been accepted to law school is, of course, nonsense. Somehow, all who have gone through law school come out with the notion that it is peculiarly appropriate for the teaching of law to people who are going to be lawyers. Well, I think its a terrific method for lots of teaching and legal materials themselves are--that is, cases--are now appropriate for teaching lots of things, so I concentrate on the case method.

Although, I use almost every text book including my own that's been on the market that has cases in it. This year I got tired of teaching my own, so I'm using Goldstein's book[22] which is really designed for lawyers and not for educators, because it pre-supposes a fair amount of knowledge about some things that one who has not taken a first law course simply wouldn't know. That creates some problems. In an advanced course

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22 Stephen R. Goldstein, Law and Public Education, cases and materials. Indianapolis: Bobbs-Merrill Co., Inc. 1974.

which I teach--which is a seminar--the subject matter varies from year to year. The most successful times that it has been taught have been when we have had a specific project funded by an outside source which required a product at the end; for example, the past year, with the National Institute of Education and the Lawyers' Committee for Civil Rights under Law, critiquing model statutes that were being drafted partly by us and partly by the Lawyers' Committee people. Most of the time was spent on a notion called "learner verification" which is something most probably don't know much about. Basically, it's a process for the development of and testing of textbooks.

Indeed, the students--not I--finally wrote a lead article for the Harvard Journal on Legislation.[23] There, they were trying to bring into focus their educational views upon the development of statutes that were being developed by lawyers; that is, lawyers who worked for the National Committee for Civil Rights. In fact, some statutes have been enacted, at least in part I believe, in Florida and in California. I found this to be fruitful cooperation. Students had to read some cases. In order to be able to do that effectively they had to do statutes. and try to figure out what statutes meant. They had to try to decide that, if you have an educational policy in mind--e.g., the improvement of textbooks by a process through which the learners become involved in the development of the books--should it be statutorily required? What is implied by that? If one wants it statutorily required, how does one write a statute to do that? How, in writing a statute does one mitigate against any undesirable consequences?

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23 Members of a seminar at the Harvard Graduate School of Education: "Quality Control for Instructional Materials: Legislative Mandates of Learner Verification and Implications for Public Education"in Harvard Journal on Legislation, June, 1975.

Students finally reached the view that probably such a statute would not be wise but in that process, they went through an important part of legal practice. Those of us who were trained at law schools don't deal much with the legislative drafting process. We generally read materials from statutes that have already been drafted or cases that interpret statutes. It's not normally thought of as part of the law school curriculum. I think it ought to be! Further, I think it's appropriate for the education school curriculum, too.

Dr. Van Geel: To add a new dimension on things that typically go on in a law school, one difference beyond the case analysis, I try to introduce in most courses is the various kinds of political science and social science research to shed some light on what we know about education and the education process.

The new collective bargaining course we have on the books is probably going to be radically different from what has been discussed so far. One idea behind this course is to have it jointly taught with me as a lawyer teaching the legal framework with another instructor who has been involved in collective bargaining. We will mix the experience of the bargainer within the legal framework of education. We will use various collective bargaining games, simulations and have expert guests who have been involved in such activities as preparation of positions for collective bargaining; the grievance process and the administration of the contract to make the course not just book learning but to give the flavor of the whole system of collective bargaining. There is a different mixture in a course of this sort.

Moderator Ruben: The content and methodology of courses is somewhat dependent on the nature of the audience at whom the course is aimed and the objectives of the instructor. It also depends on the variety of courses which can be accommodated within a curriculum as well as the background and predilection of the instructor.

For example we have two members of the panel who are lawyers and two who are not, yet all four panelists are very successful in offering courses on school law. One of my colleagues offers the course in our School of Education. He is a practicing lawyer and on the law faculty. In his view, that's the only place it should be offered.

Is there some need for accomodation here such as a team teaching approach being utilized more effectively in various schools of education or would that be a case where too many cooks spoil the broth?

Professor Van Geel: Whether or not to use team teaching really depends on the course. Two of my courses, as mentioned, are heavily into constitutional law with emphasis upon analysis and big policy issues. Those courses seem to work best with just one person mainly using a question-answer dialogue. The collective bargaining course, I think should have a mix of theorists and practitioners. For example, just to look at the bare rules of the Taylor Act in New York does not tell anybody about what goes on in collective bargaining in that state; like a game situation where there are costs and penalties; where people play for high stakes; making allowance for maneuverability; trying to lure the other side into striking or being charged with provoking a strike, and even not paying the penalty if you go on strike.

All of these things are covered by statutes. I think it would be a mistake not to team teach this particular kind of course. The other courses I prefer to teach alone.

Moderator Ruben: One of the major areas of law in education now evolving is in higher education; that is, post-secondary institutions including technical schools and four-year colleges and universities. There we have different structures. Most public universities are corporations and not run by school districts under a political entity. Private colleges, of course, are run by self-perpetuating boards of trustees. What are the differences in emphasis in teaching education law to reflect the variety of serious substantive problems which are rather peculiar to higher education?

Dr. Reutter: I have to make one comment on instructors' qualifications. The best approach to the thing is to have a job description of what is needed in order to communicate the subject. Merely having a Ph.D in Education doesn't mean one knows education sufficiently. The same is true for having a J.D. Any argument is silly as to whether these courses should be done one place or the other. The focus should be upon what should the course communicate. Next, write a job description as to what kinds of qualifications recognizing the top graduate of the best law school wouldn't know enough and highest graduate of the best school of education wouldn't. The rest becomes quite academic. I think we need to say what kinds of things are needed. This depends upon the other resources of the university, too. For example, at Columbia, there is a high degree of specialization in Teachers College. In my school

law courses I do not get involved in education values, per se, In personnel administration courses I do talk about the "shoulds" with the students.

One problem in educational law, committed by attorneys as well as educators, is to dabble into these substantive things without really understanding them, in depth. I think we are going to do this at the graduate level regardless of where it is done. One needs to know more about education than simply reading the Coleman Report and so on. You need sociologists and so forth. Variety in expertise is an important consideration. Some of the worst courses are taught by people who are good lawyers but they don't know enough about education and, conversely, there are many educators who dabble in and talk about the dramatic Supreme Court decisions and so on without making educational implications.

As to higher education, I really see no basic difference--except in some topics--whether we deal with higher education or public or private education. I have one course that focuses on higher education, and there is a substantial section that deals with private schools as a special topic. Regardless of grade level discussed, some things are the same on all of them. Constitutional issues differ little and the approach would be the same. As to one's audience, topics would differ; e.g., for classroom teachers, finance could be emphasized less than negligence, due process and teacher dismissal.

Moderator Ruben: Dr. Simpson, do you agree that the only significant difference between the public school and the higher educational legal problems are reflected in emphases upon content?

Dr. Simpson: Basically, yes. We don't have a separate law course on higher education. Elementary, secondary and higher education people all take the same law courses, and it's good to have that mix in that they see there is more in common than is different in the legal aspects of their jobs. Of course higher education people have fewer problems with discipline, especially corporal punishment, even though I think some of them might like to use it occasionally. Conversely, the problems connected with the pregnant student are virtually non-existent in elementary grades. These are illustrative differences. There may be a change in emphasis on the relationship of the institution to the student based upon more of a contract relationship in higher education as contrasted with the loco parentis principle in, at least, the elementary schools.

The maturity factor is more important than age, per se, as noted by comparing a developmentally disabled eleventh grader who may need much more protection than a typical sixth grader. We should try to avoid arbitrary distinctions based upon grades and ages. Instead, in the cases analyze and discuss these as some of the particulars. For example the more mature the student, the greater the responsibility he has to be aware of what good conduct rules are.

Moderator Ruben: Now, before this discussion is opened to the audience, each panelist will give a summary comment on what he would like to communicate to his colleagues who are teaching the course. Dr. Reutter, have you a particular "should" that they might look at?

Dr. Reutter: I would only repeat that I think the purpose of the course for educators--what you teach in law school to lawyers is beyond my prerogative--is to teach the students leadership in developing educationally desirable and legally sound policies on all governmental levels from the classroom up to the federal government. The case approach, I think, is important and significant. It's also an easy way for amateurs to teach, and I think this is one of the problems that arises in the schools of education, because we are talking here--and I want to make one thing perfectly clear, to quote our ex-president--we're talking about an ideally taught course, whether it be by a lawyer or an educator or by one with degrees in both areas. We recognize there's a lot of bad instruction going on in schools of education. There may even be some in law schools.

My major, practical concern is that we have to recognize that law schools and lawyers, by their very nature, are confident of themselves, while educators, by their very nature, are unsure. One thing I have sought over these many years is to try to encourage educators to try to recognize good lawyers from someone who just graduated from law school and to work with them. This is an important consideration. Mutual respect is essential in dealing with school problems. What happens in many places is that the school board attorneys don't know the substantive aspects of the education setting. Colleges may be even worse than public schools in terms of the quality of legal counsel. There has been too little incentive for school attorneys to keep up in the field of education the way they should. They get into an education case and try to stick to general kinds of things learned in law school. I would urge those of you who are in law schools to be able to recommend what you think educators

need to know to help lawyers do their job better, because counsel has to deal with the educators who get into these kinds of messes.

A real concern in the educational field is school policy being made by run-of-the-mill lawyers. This is a practical problem. Educators defer to lawyers for some reason or other without realizing that they often are not particularly qualified in that area. It returns to educational policy with which we are all very concerned. Who determines it is a serious question.

Moderator Ruben: Dr. Simpson, additional comments?

Dr. Simpson: I have two comments. One is the importance of avoiding teaching law just by the recipe approach, as mentioned before. Instead, teach students how to stay up to date; how to interpret statutes and cases and not overly interpret them or make overly broad generalizations as far as affecting practice. We use the example that after the first school prayer case came from the Supreme Court, a typical case of "over-reaction" is taking the Praying Mantis out of the biology lab. We in the school setting are continuously surprised at some of things that really happen. Look at most policy, rules and regulations of different educational agencies, schools and colleges. Much is far outdated; some has not been touched in years and this is probably just as well, considering that the policy is often poorly stated as well as outdated.

My second point is that it is not only vital for each school or college to have policy and to use it, but also, to set up a system for continuous updating. There are some fine policy development systems available. You can't just adopt someone else's system. The development

process is important. This understanding of how to stay up to date is an important tool for the student when he leaves the class. Further, get him interested in the substantive law so, while keeping himself and agency policies up-to-date, he will not pretend to be teachers' lounge counsel, advising everybody on divorce cases, wills and estates. Conversely, we have attorneys who feel expert in education matters simply because they went to school.

Moderator Ruben: Final comment, Dr. McCann?

Dr. McCann: While I'm wary because I don't know anyone else's institution, I think one thing that is helpful to remember when you look at school law is that it is not a field. Instead, we are applying a field to a function. The function is education. What that means is that it is enormously broad and therefore a great responsibility for both educators and lawyers. On the other hand, I see no particular reason why the world needs to be organized only in the way that law schools currently do it in terms of torts, contracts and so forth. I remember going into my bar exam and being shocked because they didn't tell me whether it was a torts question or a contract question. First time it ever happened to me. The fact of the matter is that the world is not organized the way the law school curriculum is organized and that, in itself, causes a problem of applying the entire body of law that's available to a function that is as complex as education. But it is fascinating!

Moderator Ruben: And Dr. Van Geel?

Dr. Van Geel: In the constitutional law courses that I teach, the basic function of the course is to provide a type of humanistic, broadening form of education coupled with a close attention to the analysis of cases.

It is not possible to transform students in colleges of education into lawyers who can avoid all the pitfalls when they are running their educational institutions. On the other hand, they can be made wiser people, more aware of some of the issues that they're wrestling with and of some of the normative factors which underly everything they do, whether they're dealing with a student or designing attendance zones. Thus, the social function; education function, plus learning by analyzing materials and thinking out problems--as Dr. McCann says, "What do you mean by that?" kind of question--are things that are feasible for most students who may take only one course in education law during the time they are in the college of education.

Moderator Ruben: Thank you all--Dr. Van Geel, Dr. McCann, Dr. Simpson and Dr. Reutter. Now for questions from the audience.

Question #1 interpreted by Moderator Ruben: The teaching of education law is largely concentrated in graduate schools and taught to administrators. Why is it not offered regularly in undergraduate curricula and offered to the bulk of the profession, which are classroom teachers?

Dr. Simpson: First, the school law courses began about 30 years ago in departments of educational administration, primarily because of the feeling that a superintendent should know something about the law to keep the board out of trouble in property, finance and contract matters. Once tradition is established it's very difficult to change it. The typical motto of a university is, "Come weal, come woe; the status be quo!" For example, at most schools of education, if an attempt were made to require it at the undergraduate level, (1) there'd be the

standard charge of empire-building, and (2) students might have to drop one of the four methods courses that they're sitting through! I mean, "taking"--I forgot it's on tape.

Another concern is the fact that the undergraduate student who wants to become a teacher really isn't aware, as we mentioned earlier, what the severe problems are until he or she has done student teaching. Now, if it could be offered at that time, then there is impact in the areas like teacher liability, contracts and student discipline.

Moderator Ruben: Anyone else on the panel want to comment?

Dr. Reutter: One problem which I alluded to is the lack of a sufficient number of really qualified instructors. The lower the level, the more difficult it is to teach a subject, and few people in schools of education or in law do more than just dabble in this at the undergraduate level. The surveys we made through the years of who is teaching the courses indicate it is a fifth or occasional course for some professors of administration; some law professors, or some practitioners in either profession. This is a real difficulty. There are few people who are truly qualified to put this into an undergraduate curriculum which has a larger more unified curriculum than a graduate school. This is just an addition, not a contradiction of anything that was said.

Moderator Ruben: It was recognized earlier in other fields where law is taught outside of the law school--particularly in the undergraduate business curriculum--that managers needed to know something about contracts, liability and rights. Now, it seems every undergraduate business program has some course in business law, and many textbooks have been published.

It is fair to say, although legal aspects of education were recognized many years ago, it was not perhaps until about 1960, with the proliferation of litigation in education, that a greater awareness appeared in education curricula as to the necessity of knowing a good deal about law and decision making. Finally, there is a difference, perhaps, in the undergraduate business curriculum there are no common requirements as compared in education for a teacher's certificate. This may be reflected in different perceptions of the need for, and availability of, the law courses in the undergraduate curriculum.

Question #2: I don't agree with earlier comments on teaching law and education to people working in secondary and higher education levels. I just don't agree at all--I looked at the textbooks and it seems they are designed primarily for elementary and secondary school educators and don't meet the needs of one interested in higher education, although, granted, many of the cases used deal with higher education. Nevertheless, my initial point is that the material is designed almost entirely for school teachers or administrators in elementary and secondary education, and I don't understand how you can say that an instructor can change the topics and approach it the same way. By the way, my background is constitutional law. I'm also director of an institute for the study of educational policy which is primarily concerned with higher education. One of our program objectives is to monitor and evaluate the impact of law and social science research on the status and needs of blacks in higher education. With that background I have a special interest in higher education and law and I just don't agree with your analysis of what it takes to teach it. I haven't found a satisfactory textbook yet.

Dr. Reutter: In my course on higher education, I have my own material, but there isn't enough of an audience for publication. My point was an academic one: the fact that there are many textbooks focussing upon the public schools. Simply, that's where the demand is, and textbooks are commercial enterprises. In my course on higher education, I make my own casebook and tie in my own lectures and so on. It's not a matter of using the books. No, I agree with you, the material in higher education is not as plentiful. Possibly, one can't just go out and grab a book and then teach from it. This might be good! It might encourage professors in higher education and law to develop materials.

Another point is the background for doing it might be different. Certainly, someone whose entire experience in education was in the elementary school would not be aware of college-type problems. To amplify on these social policy issues, in my own teaching on social policy issues; e.g. church and state, race and academic freedom, these things vary only in degrees. In other areas, there are special problems for higher education and, even, for private schools. In public colleges you get questions of out-of-state tuition, or expelling someone who allegedly cheated on an exam.

Dr. Simpson: While agreeing with Dr. Reutter, let me add that there are some textbooks which do focus upon the law and higher education. M. M. Chambers[24] has some publications which, with a little updating, are still viable instructional resources. I would make a similar comment about a two-volume resource by Brubacher,[25] written in 1971.

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24 M. M. Chambers three books were all published by Interstate Printers and Publishers, Inc., of Danville, Ill. They are:

The Colleges and the Courts Since 1950 (1964)
The Colleges and the Courts 1962-1966 (1967)
The Colleges and the Courts,— the Developing Law of the Student and the College (1972). Professor Chambers also has four earlier books in this series.

25 John S. Brubacher, The Law and Higher Education: A Casebook (2 vols.). Cranbury, N.J., Associated University Presses, Inc., 1971.

A more recent book by Alexander and Solomon[26] I have used as an alternative text for higher education students in my class. Further, Parker Young's periodical[27] and Joe Mills' newsletter[28] give much attention to higher education. Recently, the NOLPE Reporter has begun to devote a special section to higher education cases. While resources aren't as plentiful in the higher education setting, they are available.

Moderator Ruben: We really haven't addressed ourselves to what are significant differences between higher education and the public school system. For one thing, it seems that traditions are quite different. Another, the organization is quite different. School teachers may be bound to say "Yes Sir," and salute to principals, but at the college level we offer a seminar on "Why deans quit". Furthermore, the trustees of universities are not in the same position, perhaps, as elected officials in school districts.

Finally, what goes on in the classroom may be different; e.g., school teachers may be bound to adopt a certain textbook regardless of their own personal choices. I'll be damned if anyone is going into my classroom and say, "Professor Ruben, you're going to be teaching out of this book this year." Now that is my choice within academic freedom.

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26 Kern Alexander, Erwin S. Solomon, College and University Law Charlottesville, Va., Michie Company, 1972.

27 Harold W. Gentry, D. Parker Young and Donald D. Gehring are the editors of The School Student and the Courts, a quarterly published by School Administration Publications, P.O. Box 8492, Asheville, N.C. 28804.

28 Joseph L. Mills, ed., School Law Newsletter, published quarterly. Dallas, N.C.

There are many differences in tradition, organization and perhaps legal significance which would require, if not different subject areas, certainly different, legal solutions.

Dr. Reutter: It is important that we distinguish between the solutions and what goes into educational law. At least one definition of education law is that it is the law that stands now. These are the answers we now have. What they should be is anybody's guess, and I was decrying this before.

The solutions can vary in other areas. Whether Professor Ruben or his law school should have this prerogative, or whether the Association of American Law Schools should approve textbooks are value questions. We get confused between trying to seek solutions and analyzing issues. Because we teach educational law we tend to think we have solutions to all of these problems. Further, some issues might better be taught in other places; e.g., the real in-depth discussion of Church and State in America.

Dr. Van Geel: I guess I agreed with what Dr. Reutter said. Many of these issues are controversial. I don't pretend, in the classroom, to espouse only one kind of wisdom on an issue. But, if we don't get into the "shoulds" on these issues, students feel cheated. After going through, let's say in aid to private schools, the historical development of case law. We step back and look at two questions. Has the Supreme Court done it's job well? We try to reach a scholarly, legal judgment on that. It is an "ought" kind of question.

Also, what does the class think the law ought to be in this area? Without coming to closure on the question, the value issues are brought

out and discussed consistently in classes.

Dr. McCann: We've changed subjects a bit. Let me return to the higher education thing. It depends much upon the context. If the group of students is primarily interested in higher education most of the current textbooks are simply not filling the bill. Nothing says one can't develop your supplemental materials. There is, on the other hand, a lot to be said for mixing students, particularly in the institutional context I come from. It's not clear what our students are going to do. A typical career pattern no longer exists. For example, one fellow started off as a school principal, became a school superintendent and is now the head of one of the most prestigious private colleges in the Midwest. I couldn't state exactly what I should have taught that fellow to begin with. Another school principal is now assistant to the mayor of a city which is undergoing the desegregation process. He, probably, will wind up next year working as a college professor. What now are his particular interests? It is hard to predict. There is a rationale for some kind of mixture in the classroom.

I'd like to just say a word on another question which is quite different; that is, to pin down what the disagreement seems here. Is there a distinction between what one ought to teach about the letter of the law versus the notion that one ought to examine the underlying policies and issues the law if facing? I suspect, that in actual practice, the distinction may be less stark than it has appeared today, because I suspect that most of us not only deal with what a particular case says about a situation, but probably both try to extrapolate about how that case would be applied in the applied in the future. In a total approach to the content, it is hard

for me to extrapolate without understanding and discussing, with students, what the facts and policy considerations are and what the court may or may not have in mind, should have had in mind, or is likely to have had in mind.

Dr. Reutter: There is a great distinction there, at other places as well as at Columbia. I agree with what Tyll Van Geel said should be done, but not all done within the thirty or sixty clock hours of an educational law course. How could you analyze Nyquist[29] for example and not discuss church and state in America? How far does the principle of Nyquist extend? What is the principle? There are conflicting principles within the First Amendment, written so, intentionally. By discussing the fundamental issues, I don't mean solving them.

Moderator Ruben: The conflicts which are raised should be developed on a foundation all the way through. It's a question of where topics are covered. My focus is what goes on in a class that's called educational law, not what generally goes on in curriculum training of administrators or teachers. There is a difference because of if you're going to be talking about the history of church and state, then you are not dealing with other kinds of matters which are uniquely education law. The problem raised is one whether you can divorce the purely abstract legal principles, if there are any such, from the basic policy consideration which many believe have given rise to development of these principles and whether you can separate the policy and the principles and teach two

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29 Committee for Public Educ. v. Nyquist, 93 S. Ct. 2955 (1973).

different courses. The same problem presents itself in teaching in the law school as well as outside of it.

Question #3: As Dr. McCann says, the world doesn't have to be divided up along the lines of a law school curriculum. Unfortunately judges tend to, as do lawyers who bring cases suing an educational agency; not just an education case, but a First Amendment case, a privacy case or a discrimination case. It is against that background that the educator would have to understand their cause in contrast to the balance of the values which are proposed by those various principles of our Constitution. Educators are in a position basically of reaction as a defendant in these cases. Then they are going to have to predicate the defense upon a claim of governmental interest which should outweigh any individual right being served. That's the context of which the case is going to be decided. It's not going to be decided on the basis of a Coleman Report.[30]

This strikes me as a fundamental defect with education law courses taught outside of law school. I'm not accusing anyone on the panel of doing this. You are probably doing the best job that's around, but there is little imput from other areas of the law which bear upon these issues; e.g., cases which may be coming out of prison or military settings or from private employment laws. It is difficult for a student to understand how the law may be changed; how his function may be changed according to a case that was decided in a field that has absolutely nothing to do with education and to impress upon him the importance of keeping up with those kinds of

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30 James Coleman, ed. "Equality of Educational Opportunity", (The Coleman Report). Washington: U.S. Dept. of HEW, Office of Education, 1966.

cases as well as the ones that deal particularly with education law. One criticism I have is that the materials do tend to be too narrowly focussed upon education. If it's out of the educational field, you're in limbo, you have no guidance. I'd like to get some reaction on that.

Dr. Simpson: The point is well taken. In teaching education law courses, we can't just look under "Schools and School Districts" in C.J.S. or Am. Jur. While there are sufficient cases in most of the law schools' curriculum areas that have occurred in the education arena, we have to be aware of related decisions in private business, defamation, torts, labor law and the like. The member of the audience who made this point edits a fine resource which blends substance and function well in the field of education law.[31]

Dr. McCann: It is a real danger to be wary of and constantly stress with the students. One way to do it is to develop certain segments of material that rely upon cases that have developed outside legal contexts. For example, I never teach Brown[32] without starting with Plessy[33] which is about railway accommodations. Discussion on school testing starts with Griggs.[34] And so that is the way to do it.

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31 Eldon Wedlock (ed.), Journal of Law & Education, Cincinnati, Jefferson Law Book Publishing Co.

32 Brown v. Board of Educ., 347 U.S. 483 (1954)

33 Plessy v. Ferguson, 163 U.S. 537 (1896).

34 Griggs v. Duke Power Co., 401 U.S. 424, 91 S. Ct. 849 (1971).

Paul Freund[35] said. "Lawyers are people who tell you why typewriters are like milk cartons." I think it is important to stress to students that you are dealing with analogy. I also think it is terribly important to stress that you are not making lawyers in these courses. God knows law schools aren't making lawyers either for the most part, so how would you expect that one or two courses in the context of an education school are going to make a lawyer. People here at least are very cautious about suggesting that they are making lawyers. I don't think anyone here has done that.

Again, all I can say is "Yes, you are absolutely right--that is an enormous danger, and you simply have to warn people about it!" The question is what is the alternative? The alternative has been--what I think of as the ambrosia theory of law schools; that is, legal training comes in a special cup, and it is rather a special broth and that only those people who are privy to the particular gods who have hold of that cup can have any of it. Another usual response is that a little knowledge is a dangerous thing. That may be so, but the response to that is that no knowledge may be more dangerous than a little knowledge.

Dr. Reutter: Also, getting back to your earlier question, surely anybody properly qualified to teach education law would go as much into these other areas as would a professor of real estate law who

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35 A quote from class lecture at Harvard Law School.

happens to pick up a survey course in the school of education, then teach school law. Your point is well taken and could be a valid criticism of the status, but we are stressing what should be done.

Question #4: What do they teach in other schools such as business? How many hours of law or business law? How many semester hours of law are taught to undergraduates in the schools of education and how many semester hours of law are taught to undergraduates in the schools of education and how many in graduate schools? How many take courses, and how many professors in the U.S. teach in this area?

Dr. Reutter: To the third question, very little in organized courses in undergraduate school, but more at the graduate level. Education has a different curriculum structure than does law. One is generally completely into law school or not, but in Education people can get masters, specialists or doctoral degrees and then go through all the different career patterns that Walter McCann described. If you looked in the college catalogs, most have a three hour school law course and infrequently, some advanced course which doesn't have much of a structure. It may be problem-oriented, suited to the students.

Now, how many take it? I think if you asked, "How many who are preparing for a program in administration would take it?" The answer now is that most would. This is not true for others in education. If one teaches mathematics and wants to be a department head someday, he might take the course. After the campus revolutions of the sixties, many requirements in education schools went out the door. Thus, law can be elected more easily, now.

Dr. Simpson: It's a case of institutional negligence to let any person go out and become a teacher or administrator without some fundamental knowledge of law.

Question #5: The two separate schools--law & education--ought to cooperate and communicate and, even attempt to teach that mixed group primarily in the law school context of lawyers rather than of educators. Combining graduate education students and law students in classes has potential. How far would you go with it?

Dr. McCann: In my own law school we do exactly that. There are relatively few law students in the greater body of graduate education students. The law students tend to be resource persons on group projects. This team effort to develop a paper on a topic has worked out reasonably well. There is a good transfer of information as the lawyers seem to learn a good bit about the content of educational problems and apparently some of the lawyers' skills rub off on the non-lawyers who participate in the teams.

Dr. Reutter: The focus has to be primarily on one or the other unless you have some kind of a project orientation. If the purpose of your course would be analogous to a contracts course, a torts course or an education law course then you have to focus on one or the other. There are different approaches to the same kind of problems, so we focus upon the educators, although some law students come over. The focus, they are told when they come, is upon educators with whom they may later work if they get into education law. They recognize and, even, appreciate it as a different approach because we try to keep the educators

from being amateur lawyers.

We avoid procedural matters and these kinds of things which are uniquely the attorneys' domain.

It is just as bad for an attorney to dabble in school finance. To me, it is amazing that some of the leaders dealing with educational finances have re-discovered the wheel. They re-created in the late 1960's and early 1970's what was done in the 1920's by Mort and others at Columbia as is well known by anybody in educational administration. Now, lawyers have to get interested in equality of educational opportunity. We have to find a better way of financing the schools and this complete tendency on the part of another profession not to recognize it, is a serious Problem. Better law schools just like better law professors, just like better anything else, must recognize they don't know everything. If you can get this cooperation, I think its terrific but unless there is some common project, identification has to be focused on one or the other.

Question #6: Adequate plans for school finance are available but never get through legislation and never get enacted. Lawyers who represent people who perceive themselves as being deprived of something that they have as a matter of right, dream up a legal theory that fits a school program in one of these categories, like due process or equal protection. To do that, it's not easy to take a study that shows the best way to finance education and say "O.K., Judge, this is what you ought to do." How do you develop something the other side will accept?

Dr. Reutter: We have gotten to the point of saying "This is where the finance case[36] got hung up in the Supreme Court and this is the trend of state courts now". The question is what do we do, not how do we get the courts as instruments of social policy, to do the job rather than the legislatures which should face the problems.

Moderator Ruben: To change pace for a moment, what does go on in a school of education in a course on school law offered by one who is not a practicing lawyer and not a member of the bar. Bob Simpson uses a slide show to illustrate exactly what he does. This is not his entire presentation. I'm being facetious. It's just to give you a bit of an innovative approach to capture the imagination. I think he challenges the students by calling it "13 Ways to Spend the Summer in Jail" or "You May Be Involved in Litigation Tomorrow." One of the things I think that lawyers and law professors tend to be stereotyped in their presentations. I think recently they have given some thought to breaking out and doing some creative innovative things. They've been sugar-coating some wisdom to the students. I think Bob Simpson has an approach which you might find refreshing as well as interesting.

Dr. Simpson: We have found slides to be a flexible type of visual aid. Enacted scenes or pictures used out of context are grouped to illustrate the various types of legal difficulties experienced by schools, colleges and their employees. In courses we present a general overview of the legal problems while in special workshops, specific topics may be emphasized.

Some may call it shock treatment, to show all of the various ways that educators can wind up in litigation. It does get their interest, but we do try to keep some levity in the presentation. Further, the

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36 San Antonio Independent School District v. Rodriguez, 411 U.S.1, 93 S.Ct. 1278, cert. denied 411 U.S. 959, 93 S.Ct., 1919.

flexibility allowed by use of 35 millimeter slides lets us adjust the topical emphases and case illustrations to fit the audience; e.g., administrators, college professors or private school teachers.

The key emphasis is upon developing and using good policy as a preventive action rather than, as we have discussed, to make them instant lawyers. If they get that idea, they will have damned fools for clients.

Our classes generally run for two or three hours at one time, thus a variety in the instructional process not only is conducive to learning, it helps everyone stay awake. We do feel that more variety in teaching about law is beneficial. Students from the law school anonymously agree.

Question #7: Do you know of any law courses which are specifically directed to teachers whether or not they are school law? I've had more experience in law in society where school law really doesn't come in, but it does try to teach a little about the system.

Dr. Reutter: In undergraduate programs, contrary to what is blindly thought, in schools of education, the constrictions are not on more methods courses, but for more content courses, so method courses have been reduced in favor of such courses as political science, so, in many undergraduate schools that subject is where church and state could be analyzed. Many teachers took a regular liberal arts degree and then got interested in teaching. Some colleges have liberal arts courses that are designed for training teachers; e.g., in the constitutional law area. These should be taught by the same mix of education, and

political science.[37]

Dr. Simpson: The University of Miami is now developing a sixth year program for school administrators dealing in education law and policy wherein attorneys or law school professors will give, for example, a mini-course,one or two semester hours, and do their specialty on contracts, torts, administrative law, constitutional law or business law. All specifics have not yet been set. Students could elect from these special courses or take some of the regular law school offerings that would fit them. The special sections also would be open to anybody interested in how these substantive areas of law effect education.

Moderator Ruben: I would like the panelists to acquaint the audience with some of the public service opportunities which can be associated with the teaching of school law.

Dr. Simpson: I commented before as to the work of the Center. We conduct two or three workshops or training sessions a week for different groups, including students, parents, negotiators, attorneys, plus all the different educational groups. We try to identify beforehand what the interests might be. Sessions run to as many as 16 to 20 clock hours spread over three or four weeks, aiming to develop some rules and regulations. Other things include providing services, expert witnesses, mediators, and even trying to give some guidelines over the telephone to many friends that call in always with the caveat that it is not legal advice, advising them if they are already in trouble, they had better check with their county bar association and get an attorney if they don't already have one.

Dr. McCann: I've already talked about one of the public services. Another is providing access to people who are actively involved in

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37 Since the panel discussion was held, Charles J. White, III, edited an interesting volume for the American Bar Association Special Committee on Youth Education for Citizenship, Teaching Teachers About Law, A Guide to Law-related Teacher Education Programs. Chicago: ABA, 1976.

the implementation of decisions. For example, the same people I mentioned before had never read the Boston school decision.[38] I made that available to them, talked about it and changed some attitudes. I would hope the primary public service kinds of things we do, however, are through our Center for Law and Education. Whether or not you think that's a service is a matter of definition. It's certainly had a public impact largely through policy studies, because we really don't practice law as such except in the development of legislation. Even though it is a product, statutory law has a great deal more impact on most peoples' lives than almost any other kind.

Dr. Van Geel: Let me give an example of our services. A school in the Rochester area was beset by disturbances. An arrangement was set under which a task force made up of educators and citizens were to study the school amd make recommendations for change. I got involved in chairing that task force. This meant a report to the superintendent and after he responded, a follow-up activity. At the University of Rochester, this is the kind of service that is provided, ad hoc, rather than formally set and that is partly a result of an institutional phenomenon in that official policy is not to get involved in community affairs. It's a controversial position.

Moderator Ruben: Thank you ladies and gentlemen of the audience and panel.

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38 Morgan v. McDonough, 540 F.2d 527, 1st Cir., 1976.